

**FISHER & PHILLIPS LLP**  
3800 Howard Hughes Parkway, Suite 950  
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Attorneys for Defendant

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MINERVA D. YABA,	)	
	)	
Plaintiff,	)	Case No. 2:09-cv-00450-KJD-GWF
vs.	)	
	)	<b>JOINT PRETRIAL ORDER</b>
STRATOSPHERE GAMING LLC,	)	
	)	
Defendant.	)	
_____	)	

Following pretrial proceedings in this case,

IT IS ORDERED:

**I.**

This is an action for harassment and retaliation under Title VII. Plaintiff claims she was fired from her job as a casino dealer after complaining about sexual harassment. Defendant contends that to the extent any sexual harassment occurred, it adequately responded and that Plaintiff was fired for reasons unrelated to her complaints.

**II.**

Statement of jurisdiction: Plaintiffs' claims are brought under 42 U.S.C. 2000e *et. seq.*, giving this court jurisdiction pursuant to 28 U.S.C. § 1331.

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**III.**

The following facts are admitted by the parties and require no proof:

1. Plaintiff filed Charges of Discrimination and received "Right to Sue" letters thereon.

**IV.**

The following facts, though not admitted, will not be contested at trial by evidence to the contrary:

None

**V.**

The following are the issues of fact to be tried and determined at trial:

1. Whether Plaintiff was subjected to comments or conduct based on her sex, and by whom.
2. Whether the comments or conduct were unwelcome.
3. Whether Plaintiff was offended by the comments or conduct.
4. Whether a reasonable person in Plaintiff's circumstances would have been offended by the comments or conduct.
5. Whether the comments or conduct were sufficiently severe or pervasive to alter the terms and conditions of employment and create a hostile work environment.
6. Whether Defendant took prompt and appropriate remedial action in response to the any complaints made by Plaintiff.
7. Plaintiff's job performance.
8. Whether Plaintiff reasonably believed she was subjected to sexual harassment.



4. If the jury awards damages, review of the propriety of any backpay awarded and whether there is otherwise a legally-sufficient evidentiary basis for a reasonable jury to give the amount of damages awarded.

5. If Defendant is liable for retaliation, the amount of front pay to be awarded, if any.

6. The instructions to be given to the jury.

7. Any issue of fact set forth above which is more properly regarded as an issue of law.

## VII.

(a) The following exhibits may be offered into evidence by the parties, subject to the objections of any party and the court's rulings on admissibility (including decisions on any motions in limine):

### **PLAINTIFFS' EXHIBITS**

Plaintiff reserves the right to use any of Defendant's exhibits identified below or otherwise contained in Plaintiff's personnel or NERC file.

### **DEFENDANTS' EXHIBITS**

2005	Employee Handbook (D-00175 – D-00215)
06/22/06	Employee Handbook Receipt (D-00092)
06/22/06	Training Verification Sheet (D-00088)
09/01/06	Human Resources Policy and Procedure Manual - Harassment Procedure (D-00216 – D-00217)
2007	Stratosphere Hotel Work Action Report (D-00306 – D-00307)
01/23/07	Acknowledgement of Harassment Policy (D-00055)
01/26/07	Voluntary Statement of David Ware (D-00052)
01/28/07	Corrective Counseling Form issued by Pingree (D-00049)

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1	02/16/07	Plaintiff's Handwritten Sexual Harassment Complaint (D-00105 – D-00109)
2		
3	02/07	DVD Re: Plaintiff's 02/16/07 Complaint (D-00318)
4	02/26/07	Plaintiff's Handwritten Fax to Victor Perry, Esq. (P-00035)
5	02/28/07	Fred Houghland's Notes Re: Harassment Complaint Meeting (D-00111)
6		
7	03/18/07	Plaintiff's Handwritten Letter to Fred Houghland Re: Sexual Harassment Complaint (D-00112 – D-00118)
8		
9	03/22/07	Voluntary Statement of David Ware (D-00048)
10	03/25/07	Security Incident Report (D-00042 – D-00044)
11	03/26/07	Corrective Counseling Form issued by Mascolino (D-00045)
12	03/28/07	Nevada Equal Rights Commission Discrimination Complaint (P-00016 – P-00018)
13		
14	03/30/07	Corrective Counseling Form issued by Mascolino (D-00041)
15	04/20/07	Security Incident Report (D-00119 – D-00122)
16	04/22/07	Corrective Counseling Forms issued by Pingree (D-00038 – D-00039)
17		
18	05/04/07	Nevada Equal Rights Commission Charge of Discrimination (D-00149 – D-00150)
19	05/04/07	Nevada Equal Rights Commission Remedy Request (D-00151)
20	05/04/07	Plaintiff's Handwritten Notes (P-00047 – P-00051)
21		
22	05/10/07	Plaintiff's Handwritten Second Sexual Harassment Complaint (D-00123 and P-00053)
23		
24	05/11/07	Security Incident Report (D-00124 – D-00125)
25	05/20/07	Plaintiff's Diary to 07/08/07 (P-00058 – P-00061)
26	05/29/07	Nevada Equal Rights Commission Remedy Requests (P-00008 and P-00015)
27		
28	06/03/07	Nevada Equal Rights Commission Amended Charge of Discrimination (D-00157 – D-00158)

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1		
2	06/15/07	Corrective Counseling Form issued by Pingree (D-00033)
3	07/08/07	Corrective Counseling Form issued by Pingree (D-00030)
4	07/13/07	Letter from Plaintiff to the Nevada Equal Rights Commission (P-00070 – P-00073)
5		
6	07/15/07	Standard Employee Review Form Re: Plaintiff (D-00284 – D-00286)
7	07/18/07	Plaintiff's Handwritten Transfer Request (D-00126)
8		
9	08/28/07	Letter from Plaintiff to the Nevada Equal Rights Commission (D-00068)
10	09/17/07	Security Incident Report (D-00027 – D-00028)
11	09/22/07	Corrective Counseling Form issued by Mascolino (D-00026)
12	09/24/07	Plaintiff's Handwritten Spill-Over Sexual Harassment/Retaliation Complaint (D-00127 – D-00130)
13		
14	09/07	DVDs Re: Plaintiff's 09/24/07 Complaint (D-00218 – D-00219)
15	09/29/07	Security Incident Report (D-00131 – D-00134)
16	09/29/07	Security Incident Report (D-00135 – D-00142)
17		
18	10/08/07	Statement of Martha White (D-00025)
19	10/20/07	Voluntary Statement of Todd Whyte (D-00023 – D-00024)
20	10/23/07	Plaintiff's Handwritten Letter to Director of HR Re: Campaign to Push Her out of Her Job (D-00143 – D-00144)
21		
22	10/27/07	Security Incident Report (D-00020 – D-00022)
23	10/27/07	Corrective Counseling Form issued by Mascolino (D-00014)
24	10/27/07	Voluntary Statement of Michael Mascolino (D-00017)
25	10/27/07	Voluntary Statement of Stacy Thede (D-00015 – D-00016)
26	10/27/07	Voluntary Statement of Hector Castellanos (D-00018 – D-00019)
27		
28	11/13/07	Personnel Action Notice Re: Plaintiff's Separation of Employment (D-00012)

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1		
2	11/27/07	Termination Letter from Fred Houghland to Plaintiff (D-00005 – D-00006)
3		
4	12/06/07	Determination Letter from the Nevada Equal Rights Commission to the Plaintiff (P-00081 – P-00082)
5	12/12/07	Plaintiff's Handwritten Letter to the Nevada Equal Rights Commission Re: Appeal of Decision (P-00083 – P-00087)
6		
7	12/15/07	Plaintiff's Handwritten Letter to the Nevada Equal Rights Commission Re: Charges of Harassment, Wrongful Termination and Discrimination (D-00145 – D-00148 and P-00088 – P-00090)
8		
9		
10	01/03/08	Determination Letter from the Nevada Equal Rights Commission to Fred Houghland (D-00160)
11	02/01/08	Nevada Equal Rights Commission Charge of Discrimination (D-00162 – D-00163)
12		
13	02/01/08	Nevada Equal Rights Commission Remedy Request (D-00164)
14	03/13/08	Nevada Equal Rights Commission Amended Charge of Discrimination (P-00100 – P-00101)
15		
16	06/16/08	Plaintiff's Handwritten Letter to the Nevada Equal Rights Commission Re: Reply to Respondent's Position (P-00109 – P-00111)
17		
18	07/10/08	Plaintiff's Handwritten Letter to the Director of Social Services for Zahn Housing (P-00123)
19		
20	10/14/08	Determination Letter from the Nevada Equal Rights Commission to the Plaintiff (P-00112 – P-00113)
21		
22	10/27/08	Plaintiff's Handwritten Letter to the Nevada Equal Rights Commission Re: Appeal of Decision (P-00116 – P-00117)
23		
24	10/27/09	Plaintiff's Interrogatory Answers
25	Undated	Guest Comment Cards (D-00034 – D-00035, D-00046 – D-00047, D-00053 – D-00054)
26	Undated	Plaintiff's Handwritten Notes (P-00028 – P-00029 and P-00054 – P-00055)
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1 Defendant reserves the right to use, as needed, any other document at trial that  
2 has been produced by any party in the case.

3 (b) As to the preceding exhibits, the parties have reached the stipulations  
4 stated regarding the same: The parties will confer before trial and attempt to stipulate  
5 to the admission of as many exhibits as possible.  
6

7 (c) As to the preceding exhibits, the party against whom the same will be  
8 offered may object to their admission upon the grounds stated: Pending the stipulations  
9 contemplated by (b) above, the parties reserve their right to object to any exhibit as  
10 permitted by the Federal Rules of Civil Procedure and Federal Rules of Evidence.

11 (d) Depositions: The parties may use depositions to the extent permitted  
12 by Federal Rules of Civil Procedure 32 and the Federal Rules of Evidence.  
13

14 (e) Objections to Depositions: The parties reserve all objections  
15 permitted by the Federal Rules of Civil Procedure and Federal Rules of Evidence.

16 **VIII.**

17 The following witnesses may be called by the parties upon trial:

18 (a) Plaintiffs' Witnesses: Plaintiff reserves the right to call any witness  
19 listed by Defendant below or any other witness disclosed in the case.  
20

21 (b) Defendants' Witnesses:

22 1. Minerva Yaba, c/o Richard Segerblom, Esq., 700 South Third Street,  
23 Las Vegas, NV 89101.

24 2. Fred Houghland, c/o American Casino & Entertainment Properties,  
25 LLC, 2000 Las Vegas Boulevard South, Las Vegas, NV 89104.

26 3. Thomas W. Rogers, Jr., Las Vegas, NV 89104.<sup>1</sup>  
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28 <sup>1</sup> Pursuant to Special Order No. 108, full home addresses are not provided. They will be provided to Plaintiff's counsel as needed for the purpose of subpoenaing witnesses for trial.



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- 1           4.     Michael Mascolino, Las Vegas, NV 89129.
- 2           5.     Raymond Pingree, Henderson, NV 89014.
- 3           6.     Stacy Thede, Las Vegas, NV 89148.
- 4           7.     Anthony Zigo, Las Vegas, NV 89143.
- 5           8.     James Lovewell, Henderson, NV 89074.
- 6           9.     Hector Castellanos, Las Vegas, NV 89183.
- 7           10.    David Ware, Las Vegas, NV 89143.
- 8           11.    Jerry McCawley, c/o American Casino & Entertainment Properties,
- 9           LLC, 2000 Las Vegas Boulevard South, Las Vegas, NV 89104.
- 10           12.    Martha White, c/o American Casino & Entertainment Properties, LLC,
- 11           2000 Las Vegas Boulevard South, Las Vegas, NV 89104.
- 12           13.    Todd Whyte, Las Vegas, NV 89123.
- 13           14.    Custodian(s) of any of Defendant's records, including, but not limited to,
- 14           personnel records.
- 15           15.    Any person necessary to authenticate any of the possible exhibits listed
- 16           herein.

17           Defendant reserves the right to call any other witness disclosed during the

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19

20           course of the case.

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22                           **IX.**

23           Counsel have met and herewith submit a list of three (3) agreed-upon trial dates:

24                           January 9, 2012, January 16, 2012, January 23, 2012

25           ///

26           ///

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**X.**

It is estimated that the trial herein will take approximately three to four days.

APPROVED AS TO FORM AND CONTENT

DATED this 26th day of April 2011.

FISHER & PHILLIPS LLP

/s/ Scott M. Mahoney, Esq.  
Scott M. Mahoney, Esq.  
3800 Howard Hughes Pkwy., Suite 950  
Las Vegas, NV 89169  
Attorneys for Defendant

/s/ Richard Segerblom, Esq.  
Richard Segerblom, Esq.  
700 South Third Street  
Las Vegas, NV 89101  
Attorney for Plaintiff

**ACTION BY THE COURT**

(a) This case is set down for jury trial on the fixed/stacked calendar on January 9, 2012 at 9:00 a.m. Calendar call shall be held on January 3, 2012 at 9:00 a.m.

(b) An original and two (2) copies of each trial brief shall be submitted to the clerk on or before January 4, 2012.

(c) Jury trials:

(1) An original and two (2) copies of all instructions requested by either party shall be submitted to the clerk for filing on or before January 4, 2012.

(2) An original and two (2) copies of all suggested questions of the parties to be asked of the jury panel by the court on *voir dire* shall be submitted to the clerk for filing on or before January 4, 2012.

(d) Court trials:

Proposed findings of fact and conclusions of law shall be filed on or before: Not Applicable.

1 The foregoing pretrial order has been approved by the parties to this action as  
2 evidenced by the signatures of their counsel hereon, and the order is hereby entered and  
3 will govern the trial of this case. This order shall not be amended except by order of  
4 the court pursuant to agreement of the parties or to prevent manifest injustice.

5 DATED: April 26, 2011

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8 UNITED STATES DISTRICT JUDGE  
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